

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
Huntington Division

CASIE JO MCGEE and SARAH ELIZABETH
ADKINS; JUSTIN MURDOCK and WILLIAM
GLAVARIS; and NANCY ELIZABETH
MICHAEL and JANE LOUISE FENTON,
individually and as next friends of A.S.M.,
a minor child;

Plaintiffs,

v.

Civil Action No. 3:13-24068

KAREN S. COLE, in her official capacity as
CABELL COUNTY CLERK; and VERA J.
MCCORMICK, in her official capacity as
KANAWHA COUNTY CLERK;

Defendants,

And

STATE OF WEST VIRGINIA *ex rel.*
PATRICK MORRISSEY, ATTORNEY
GENERAL OF WEST VIRGINIA,

Intervenor.

JOINT REPORT OF PARTIES PLANNING MEETING

1. Pursuant to Federal Rule of Civil Procedure 26(f) and this Court's previous Order,
a meeting was held on December 16, 2013. Those participating were:

John H. Tinney, Jr.
Camilla Taylor
Karen L. Loewy
Elizabeth Litrell
Lindsay C. Harrison
Counsel for Plaintiffs

Charles R. Bailey
Michael Taylor
Counsel for Defendant Vera J. McCormick

Lee Murray Hall
Sarah A. Walling
Counsel for Defendant Karen S. Cole

Daniel W. Greear
Elbert Lin
Julie Ann Warren
Counsel for Intervenor State of West Virginia

Initially, the parties discussed the nature of this lawsuit and agreed that, in all likelihood, this constitutional challenge would be resolved through motion practice on questions of law. Accordingly, the parties also agreed that it was unlikely that factual discovery would be necessary to present this matter for resolution by this Court.

Although all parties participated in good faith in attempting to reach an agreement as to the schedule and future deadlines, the parties were not able to reach an agreement. This Court has scheduled a hearing for January 6, 2014, and the parties will be prepared to discuss their respective positions with the Court at that time.

Plaintiffs' Position: Rule 12(b) Motions have been filed and will be fully briefed during the first week of January. Plaintiffs intend to file promptly a dispositive Motion for Summary Judgment. Briefing on that dispositive motion may proceed in accordance with the local rules or upon an alternative schedule set by the Court. As counsel for Plaintiffs expressed during the planning meeting, Plaintiffs are amenable to reasonable requests for extensions to the time set by the Local Rules. Discovery should proceed simultaneously and in the normal fashion so that, in the event that the Court does not dispose of the case in its entirety upon consideration of the parties' respective dispositive motions, a trial can proceed promptly and efficiently thereafter.

Defendants' Position: Defendants have filed their respective Rule 12(b) motions and believe that it would be most efficient for the Court to resolve those motions, which could narrow the issues, before summary judgment briefing begins. Consistent with the Federal Rules of Civil Procedure, Defendants' respective answers should be due 14 days after the Court's resolution of their respective Rule 12(b) motions. Defendants would like the Court to address the appropriate briefing schedule and page limits for the parties' expected summary judgment motions during the Court's scheduling conference on January 6, 2014. At a minimum, should Plaintiffs file a summary judgment motion before January 6, Defendants' request that their time to respond should not begin to run until that date. Furthermore, because all parties agree that discovery is unlikely to be necessary, Defendants believe that it is in the interest of judicial efficiency to defer scheduling of discovery until the Court has resolved the parties' summary judgment motions and determined whether discovery is needed.

2. Pre-Discovery Disclosures. The parties will exchange pursuant to this Court's December 2, 2013 Order, on January 21, 2014.

3. Plaintiffs should be allowed until February 5, 2014 to join additional parties and amend the pleadings. This action is not suitable for designation as a complex case requiring special case management procedures and additional pretrial conferences. The parties *do not* wish to have a United States Magistrate Judge conduct any proceedings other than potential discovery disputes.

Plaintiffs' Position. Although the parties agree that the Court is likely to resolve this case on motions as a question of law, Plaintiffs would like the Court to set a prompt trial date¹ and discovery deadlines in the event that further proceedings become necessary.

¹ Plaintiffs respectfully suggest that a trial date in June of 2014, or as soon thereafter as the Court finds appropriate would be appropriate.

Defendants' Position. Defendants do not believe that discovery or a trial is necessary, and ask the Court to rule on all dispositive motions before setting discovery or trial dates. In the interest of judicial efficiency, Defendants further request that briefing on summary judgment not begin until after Plaintiffs' deadline for joining additional parties and amending the pleadings has passed.

DATED: December 20, 2013

Respectfully submitted,

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